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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959,

No. 558.

EDWARD VANCE,
Petitioner,

vs.

AMERICAN SOCIETY OF COMPOSERS, AUTHORS, AND PUBLISHERS (ASCAP); BROADCAST MUSIC, INC. (BMI); SHAPIRO, BERNSTEIN & CO., INC.; EDWIN H. MORRIS & CO., INC.; DUCHESS MUSIC CORPORATION; MAIN STREET SONGS, INC.; JENKINS MUSIC COMPANY; DECCA DISTRIBUTING CORPORATION; DECCA RECORDS, INC.; CHANCELLOR RECORDS, INC.; KMBC RADIO AND TELEVISION BROADCASTING STATION; WHB RADIO BROADCASTING STATION; and KATZ DRUG COMPANY,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR ABOVE NAMED RESPONDENTS, IN OPPOSITION.

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STATEMENT.

The opinion below is printed at pages A-1 to A-10 of the Petition and is now reported, 271 F.2d 204. Page

references thereto are hereinafter made as (Pet. A-1; A-2, etc.);

d. The opinion discloses that Mr. Vance is not a lawyer, and

(a) This is the eighteenth of various petitions or amended petitions prosecuted by Mr. Vance in various proceedings during the past fifteen years, in District Courts in the Western and Eastern Districts of Missouri and in the Southern District of New York, all of which, in sundry forms, involved the same songs and substantially the same subject matter and claims, and

(b) That a former petition was denied (1946), in *Vance* v. *ASCAP et al.*, certiorari denied 329 U.S. 809, 91 L. Ed. 691, and

(c) That all of the federal district judges who have heretofore considered his contentions and pleadings reached the same conclusions expressed by Judge Sugarman in 1953, in *Vance* v. *ASCAP*, 14 Fed. R. D. 31; which the opinion quotes as follows:

> "Full opportunity has been given plaintiff to set forth his claims, whatever they may be. He has ignored the court's offer to supply, or its advice that he retain competent counsel.
>
> "The time has come when this court must assert its indisposition to be further imposed upon by this plaintiff's refusal to retain or accept competent counsel.
>
> "The motions to dismiss the complaint for failure to comply with F.R. Civ. Rule 8(e); 28 U.S.C., are granted with prejudice and without leave to plead over," and

(d) The Court of Appeals further said:

> "It follows that this complaint, like that considered by Judge Sugarman and quoted from above, utterly fails to comply with Rule 8 F.R.C.P. It was attacked on that ground before Judge Smith and his conclusion that the complaint could certainly be dismissed for failure to comply with that Rule is fully justified." (A-5, A-6).

2. The Opinion passes to the next point and says:

> "The conclusion of the court that there was improper venue requiring dismissal of the action is also fully sustained."

It points out that the complaint charges that three New York music publishing companies each procured separate copyrights on separate songs claimed by Mr. Vance and alleges that they are using such copyrights illegally and unless the Court declares such copyrights invalid, *plaintiff will be unable to enforce his rights.* Plaintiff demands that the copyrights of the publishers be declared illegal and invalid (A-6). His unverified complaint also demands injunction against them (A. 1, 8).

(a) The opinion further says (A-7):

> "But the record shows that neither of the New York publishing companies, purported owners of the copyrights, is found within the territorial jurisdiction of the court where this action is brought and *no valid service of process has been or can be made upon either of them there.* Certainly copyrights are property and the plaintiff did not and could not show how the court could divest the holders of the copyrights here involved without valid service of process on them and according them a day in court. They are manifestly indispensable parties to the plaintiff's action as the unequivocal allegations of the complaint referred

to clearly demonstrate and the court did not err in finding improper venue as to them."

"The conclusion of the district court that in the absence from the jurisdiction of the indispensable parties defendant there was 'improper venue' and that the court was without jurisdiction of the subject matter was therefore not erroneous." (Emphasis supplied).

3. The Court of Appeals further found that Mr. Vance's complaint invoked the Copyright Act. Title 17, U.S.C.A., and that the action is a civil action included under Section 115 (b) of Title 17, which reads:

"Civil Actions—No civil action *shall be maintained* under the provisions of the title unless same is commenced within three years after the claim accrued." (Italics supplied).

(a) Section 115 of Title 17, was amended September 7, 1957, but its operation was deferred one year, to September 7, 1958, because its three year limitation period by its terms applied to all actions, whether or not they were filed or accrued before or after the effective date of the Section.

(b) The Court says that plaintiff's action

"is brought, as shown, to correct the wrong claimed to have been done to plaintiff on taking out copyrights in 1937, 1940 and 1942, which he claims was wrongful and illegal. That claim of plaintiff *accrued when the wrongs were done* and more than three years elapsed before plaintiff brought his action here to abate the wrong." (Pet. A-8) (Emphasis supplied).

(c) The Court, on page A-10, further points out that none of the district judges made any express determina-

tion on the merits, that Vance's action was barred by limitation. In that state of the record, it was deemed inappropriate to make decision to that effect for the first time on appeal. It is mentioned that no precedents by a Circuit Court had been found on the new Section 115.

(d) The comparison between the new Section 115 and the facts stated, place the ultimate question in such sharp focus that it is obvious that the present action and any subsequent actions are inevitably barred by the limitation provisions of Section 115.

4. The dismissal of the complaint by the District Court was affirmed on two grounds: (a) that it failed to comply with Rule 8, F.R.C.P., and (b) that there was improper venue of three indispensable parties, upon whom no valid process had been or could be served within the territorial jurisdiction of the District Court. There was a virtual ruling that the plaintiff's claims growing out of alleged matters in 1937, 1940 and 1942 are also fully barred by the three year limitation provisions of Title 15, Section 115 (b), U.S.C.A.

ARGUMENT IN OPPOSITION.

Mr. Vance concludes his petition with the statement that the copyright registrations listed in Paragraph 4 of his complaint must be declared invalid.

The Court below pointed out that no valid service of process was obtained (and none could be obtained) on the registered statutory proprietors of such copyrights, which are New York corporations, not doing business in Missouri. They are indispensable parties, to authorize any relief.

If Mr. Vance insists upon a formal adjudication that his claims are also barred by limitation, he may readily

obtain it by suits in New York against such New York music publishers, instead of continuing his Fabian policy of long distance repeated, futile attacks upon them from Missouri. The District Court may well have included the bar of limitations as an additional reason for dismissing Mr. Vance's complaint, but was not required to do so.

Mr. Vance's "Questions Presented" and "Reasons for the Writ" have been carefully considered. No substantial or meritorious questions have been found, which require comment.

CONCLUSION.

The case presents no questions warranting review by this Court. The petition for a writ of certiorari should be denied.

Respectfully submitted.

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